

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

ROBERT V. SHIPMAN,

Plaintiff,

v.

UNITED STATES OF AMERICA, acting
through the **UNITED STATES POSTAL
SERVICE,**

Defendant.

Case No. 3:21-cv-00606-SB

ORDER

John M. Oswald, Bottini & Bottini PC, 6420 SW Macadam Avenue, Suite 214, Portland, OR 97239. Theodore P. Heus, Quinn & Heus, LLC, 9450 SW Germini Drive, PMB 22366, Beaverton, OR 97008. Attorneys for Plaintiff.

Michael James Jeter, United States Attorney's Office, 1000 SW Third Avenue, Suite 600, Portland, OR 97204. Attorney for Defendants.

IMMERGUT, District Judge.

On December 28, 2021, Magistrate Judge Stacie F. Beckerman issued her Findings and Recommendation ("F&R"). ECF 16. The F&R recommends that this Court grant Defendant's motion to dismiss, ECF 5, with leave to amend. On January 7, 2022, Plaintiff filed objections. ECF 18. Plaintiff also filed a motion for leave to file an amended complaint. ECF 19. On

February 4, 2022, Defendant responded to Plaintiff's objections, ECF 24, and opposed Plaintiff's motion for leave, ECF 22. For the following reasons, this Court ADOPTS Judge Beckerman's F&R in full.

STANDARDS

Under the Federal Magistrates Act ("Act"), as amended, the court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). If a party objects to a magistrate judge's F&R, "the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.* But the court is not required to review, de novo or under any other standard, the factual or legal conclusions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc). Nevertheless, the Act "does not preclude further review by the district judge, *sua sponte*" whether de novo or under another standard. *Thomas*, 474 U.S. at 154.

DISCUSSION

This Court has reviewed de novo the portions of Judge Beckerman's F&R to which Plaintiff objects and accepts Judge Beckerman's conclusions. Although Plaintiff styled his cause of action as one for negligence, *see* ECF 1 at 4, Judge Beckerman properly "look[ed] beyond [Plaintiff's] classification of the cause of action to examine whether the conduct upon which the claim is based constitutes one of the torts listed in [28 U.S.C.] § 2680(h)." *Sabow v. United States*, 93 F.3d 1445, 1456 (9th Cir. 1996).

This Court declines to address Plaintiff's motion for leave to file an amended complaint, ECF 19, which is properly before Judge Beckerman.

CONCLUSION

Judge Beckerman's F&R, ECF 16, is adopted in full. This Court GRANTS Defendant's motion to dismiss, ECF 5, and DISMISSES this case with leave to amend.

IT IS SO ORDERED.

DATED this 30th day of March, 2022.

/s/ Karin J. Immergut
Karin J. Immergut
United States District Judge